

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES BEAMER AND THOMAS J.
BURKE, AS TRUSTEES OF THE IBEW
LOCAL NO. 812 ANNUITY PLAN AND
IBEW LOCAL NO. 812 HEALTH AND
WELFARE FUND,

Plaintiffs,

v.

PRECISION INSTALLATIONS, INC.,

Defendant.

CIVIL ACTION NO. 3:13-CV-1404

(JUDGE CAPUTO)

MEMORANDUM ORDER

Pursuant to the Court's Memorandum Order entered on September 30, 2013, granting Judgement by Default by the Court for Plaintiffs, Plaintiffs have submitted a Supplemental Affidavit and supporting documentation (Doc. 10). This Supplemental Affidavit and documentation provides the information necessary to calculate the amount of the requested damage award.

The Court earlier stated that for the months of February through May of 2013, the amount of unpaid contributions to be awarded was **\$314.50**. (Doc. 9, 6.) The Court also stated that attorney's fees in the amount of **\$2,365.00** and costs in the amount **\$537.50** would be awarded. (Doc. 9, 7.)

Under the CBA and Trust Agreements in this case, Defendant is required to pay liquidated damages in the amount of ten percent (10%) of the unpaid contributions as well as interest at a rate of one and one-half percent (1.5%) of the delinquent amount, per month. (Doc. 1, 4-5; Doc. 7-2, 12-13; Doc. 7, Ex. A, 20; Doc. 7 Ex. B, 20.) Thus, liquidated damages for the months of February through May of 2013 amount to **\$31.45**,

while interest amounts to **\$30.90**, calculated up to October, 2013.¹

Plaintiffs' Complaint demanded judgment against Defendant for "contributions due to Plaintiffs . . . for the months of February, March, and April, 2013, plus any additional contributions due since the filing of this action." (Doc. 1, 7.) Plaintiffs' Brief in Support of Motion for Judgment by Default by the Court requested damages that became due after the Complaint was filed, specifically, since for the month of May, 2013. (Doc. 8, 19.) Plaintiffs have since provided documentation regarding delinquent contributions for the months of June, 2013 through September, 2013. (Doc. 10-2.) Although Plaintiffs request damages for contributions that did not become due until after the Complaint was filed, Defendant had sufficient notice that it could be liable for such damages. See, e.g. *Finkel v. INS Elec. Services Inc.*, No. 06-CV-4862, 2008 WL 941482, at *5 (E.D.N.Y., Apr 4, 2008); *King v. STL Consulting, LLC*, No. 05-CV-2719, 2006 WL 3335115, at *5-6 (E.D.N.Y., Oct. 3, 2006).

Based on the supplemental documentation provided by the Plaintiffs, the Court determines that from June through September of 2013, under the CBA, the amount of unpaid contributions due is **\$816.75** (Doc. 10-2, 6). The liquidated damages are **\$81.68** and the interest due is **\$28.23**, using the rates set out in the CBA and Trust Agreements. The total amount to be awarded based on unpaid contributions, liquidated damages, and interest for these months is **\$926.66**.

Therefore, the total amount of unpaid contributions, liquidated damages, and interest for the months of February through September of 2013 is **\$1,303.51**. With the

¹ Although the Court initially stated that liquidated damages and interest due on unpaid contributions for these months would be \$2,396.03 based on calculations provided in the Affidavit of James E. Beamer (Doc. 7-2, 16), upon further review and in light of the supplemental documentation, the Court determines that the appropriate award amount for liquidated damages and interest for these months is \$62.35.

addition of attorney's fees and costs, the total amount to be awarded to Plaintiffs in this action is **\$4,206.01**.

ACCORDINGLY, now this 30th day of October, 2013, **IT IS HEREBY ORDERED** that:

- (1) The Clerk of Court is directed to enter judgment in favor of Plaintiffs in the sum of \$4,206.01.
- (2) The Clerk of Court is directed to mark this case as **CLOSED**.

/s/ A. Richard Caputo

A. Richard Caputo
United States District Judge